Testimony regarding the Emergency Financial Manager Bills
House Bill 4214

Matt Schenk
Chief of Staff for Wayne County Executive Robert Ficano
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Having served in municipal and County government for the past 14 years, and having recently taken the Emergency Financial Manager Training Program from the Michigan Turnaround Association and Michigan State University, I think I have a unique perspective to offer comments on the proposed bills. These comments are reflective of the position of Wayne County on the proposed amendments to Act 72.

From the perspective of the intent of the bills, I believe that there is a flaw in the sense that the bills currently do not provide an incentive for self-reporting of an impending financial crisis. In fact, by requiring the elimination of salaries for the Chief Administrative Officer and the Governing Body upon the appointment of an Emergency Financial Manager ("EFM"), the bills actually provide a disincentive to openly presenting budget challenges. In order to solve this issue of perspective, I would suggest the following:

- The Chief Administrative Officer should be permitted, under the Act, to request a review team be appointed and at the same time present a financial recovery plan to the review team. If the Governor (through the State Treasurer) accepts the recovery plan, then the Treasurer should be empowered to appoint the Chief Administrative Officer as the EFM for purposes of implementing that plan.
- This change will encourage strong Chief Administrative Officers from coming forward with their own bold plans that have proven difficult and/or impossible to have approved locally for whatever reason.

Another general comment on the bills is that there is a risk that the bills, as drafted, could become susceptible to an challenge as a State unfunded mandate. This is true because the EFM statute requires the local government to pay costs for arguably a "state employee/appointee" [Sec 15(5), p. 21 – EFM is appointee of State Treasurer who serves at will and local must pay all costs] and it requires use of the Attorney General for certain cases at the local government's expense? [Sec 25(2)]

(2) By eliminating salaries for elected officials immediately, there is **no incentive for a voluntary request** for assistance before times get too bad. [p.34, sec 19(3)] Elimination of salaries only speaks to Chief Admin Officer and Governing Body, but not the other electeds. Why?

- Why is it mandatory that the EFM suspend all powers of the Chief Administrative Officer and Governing body? p.33, 19(2).

Other General Comments on the Bill:

(1) Amend the definition of Municipal Government to include: a portion of the government (i.e. a department or fund headed by another elected official, the courts, a component unit, or a pension system). This seems to be the intent from the sections below, but is certainly not express and could create some confusion and litigation.
   a. Sec 19(1)(dd) allows the EFM to take over the Pension system and remove the trustees.
   b. Sec 19(1)(ee) allows EFM to trump the powers of any elected official within the local government.
   c. Section 18(1)(a) empowers the EFM to conduct all aspects of operations of the local government. Does this include the Courts, other elected officials, and the other Component Units of Government (DDAs, TIFAs, Brownfield Authorities, etc.)?

(2) Sec 14a(4) provides that officials must listen to the EFM. What are the teeth for "other elected officials?" Only the Chief Admin Officer can be recommended for removal from office. Section 19(1)(m) limits the EFM power so that an EFM cannot remove an elected official who heads a department of the local government.
   a. This inequality must be addressed. If the EFM has the authority to recommend that one locally elected official be removed due to financial mismanagement, the EFM should have this authority with respect to all elected officials.
   b. By the same token, if the EFM is required to rescind the salary of the Chief Administrative Officer and the Governing Body, the EFM should also be required to remove the salary of the other elected officials. Section 19(3).

(3) Why is it only the Governing Body and not the Chief Administrative Officer who can appeal a determination by the Governor of severe financial distress? Section 15(3). Given the definition of Chief Administrative Officer, it should certainly be the Chief Administrative Officer who appeals the decision. Currently, under our Charter, the County Executive determines whether to initiate litigation.

(4) Section 19(1)(y). The intent here is for the EFM to be able to reach out to Counties or other governmental agencies to acquire services from the other municipality. In our case, both the Charter Counties Act and the Wayne County Charter (as well as the Macomb County Charter) prohibit us from offering a service to one municipality unless we offer it to all 43 of our communities. You may want to reference that this EFM statute allows for cooperative services "not withstanding any contrary provision of the Charter Counties Act or a local charter."

(5) Section 19(1)(j) addresses the EFM's authority to unilaterally modify collective bargaining agreements. I believe that the language needs correcting on two accounts:

a. It should expressly reference Act 312 and PERA with language such as "notwithstanding any contrary language in Act 312 or PERA, the EFM may …". This would help show the clear legislative intent for the EFM statute to trump the other laws in this area.
b. Secondly, the section should also speak to Civil Service Rules. I assume the intent of the language is to empower the EFM to address financially problematic language wherever it exists. This language can just as easily be found in civil service rules as in a collective bargaining agreement. Therefore, the language should address both.

There is no doubt that the State of Michigan needs to be in a better position to address financial distress by our municipalities and school districts. With these suggested changes to HB 4214, the bills will be better positioned to provide the assistance that is needed.